

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 02, 2019

SEAN F. McAVOY, CLERK

CHRISTOPHER WIRTS,

Plaintiff,

v.

HEATHER WILSON, in her official
capacity as the Secretary of the United
States Air Force,

Defendant.

No. 2:18-cv-00343-SMJ

**ORDER GRANTING LEAVE TO
FILE AMENDED COMPLAINT**

Before the Court, without oral argument, is Plaintiff Christopher Wirts's Motion to Amend Complaint, ECF No. 31. Defendant does not oppose the motion to amend but requests that leave to amend be granted following resolution of its pending motion to dismiss. ECF No. 34.

Pursuant to Federal Rule of Civil Procedure 15(a)(2), "[A] party may amend its pleading only with the opposing party's written consent or with the court's leave. The court should freely give leave when justice so requires." This policy is "to be applied with extreme liberality." *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001) (quoting *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990)).

1 In *Foman v. Davis*, 371 U.S. 178 (1962), the Supreme Court offered the
2 following factors a district court should consider in deciding whether to grant leave
3 to amend:

4 In the absence of any apparent or declared reason—such as undue
5 delay, bad faith or dilatory motive on the part of the movant, repeated
6 failure to cure deficiencies by amendments previously allowed, undue
7 prejudice to the opposing party by virtue of allowance of the
8 amendment, futility of amendment, etc.—the leave sought should, as
9 the rules require, be “freely given.”

10 *Id.* at 182; *see also Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990).

11 The motion is timely; the Court’s deadline for parties to amend pleadings is
12 October 16, 2020. *See* ECF No. 20. Additionally, there is no evidence of prejudice
13 indicating that amendment should not be “freely given.” *See Foman*, 371 U.S. at
14 182. At the scheduling conference, the parties jointly moved to stay discovery
15 pending resolution of Defendant’s motion to dismiss. ECF No. 19. The Court
16 granted the request. ECF No. 20 at 1–2. Thus, document discovery has been stayed.

17 Nor was there undue delay or bad faith, as Plaintiff had to exhaust his
18 administrative remedies prior to bringing Title VII discrimination and retaliation
19 claims under the Civil Rights Act of 1964—claims that he wishes to add in the
20 amended complaint. ECF No. 31 at 3–4. Having reviewed the pleadings and the file
in this matter, the Court is fully informed and grants the motion.

Accordingly, **IT IS HEREBY ORDERED:**


1. Plaintiff’s Motion to Amend Complaint, **ECF No. 31**, is **GRANTED**.

1 2. Plaintiff shall file an amended complaint consistent with ECF No. 31-
2 1 no later than **May 10, 2019**.

3 3. An amended complaint supersedes the original complaint in its
4 entirety, *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d 1542,
5 1546 (9th Cir. 1990), which renders a motion to dismiss moot,
6 *Williamson v. Sacramento Mortg., Inc.*, No. CIV. S-10-2600 KJM,
7 2011 WL 4591098, at *1 (E.D. Cal. Sept. 30, 2011). Accordingly,
8 Defendant's Motion to Dismiss for Lack of Jurisdiction, **ECF No. 16**,
9 is **DENIED AS MOOT** with leave to renew.

10 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
11 provide copies to all counsel.

12 **DATED** this 2nd day of May 2019.

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15 SALVADOR MENDOZA, JR.
16 United States District Judge
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